

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2020
Agency 29
Rough Draft

STINNER: We will now open with Agency 29, Department of Natural Resources. Good afternoon.

JEFF FASSETT: Good afternoon, Chairman Stinner, thank you. Members of the committee, I'm Jeff Fassett, J-e-f-f, Fassett, F-a-s-s-e-t-t. I'm the Director of the Department of Natural Resources. Like my other agency has, I'd like to thank you for the opportunity to be here today to talk about FY19-21 mid-biennium budget series of bills. We have pieces in all three of the LB1008, LB1009 and LB1010. As others, I wanted to start off by certainly addressing my full support and appreciation for the Governor who recommended budget adjustments. I'm going to comment here briefly this afternoon on the three critical items that the Governor approved for inclusion into his budget documents that again are scattered through the various budget bills that are before the committee. We have two different sets of studies that we are seeking dollars for in this mid-biennium request. The first is for Missouri River Basin Flood Management Studies. Governor Ricketts has asked the department to represent the state in a complex set of discussions with the other states in the Lower Missouri Basin and the Corps of Engineers to look for new ways to prevent or minimize future flood damages to the citizens of the Lower Missouri River Basin. We are participating in a series of studies on the Missouri River that are hoping to improve the flood control system of the lower system, the lower system being defined as downstream from Sioux City to St. Louis. What's important for the studies that we've got underway is we also want a lot of attention here in Nebraska to take a hard look at the major tributaries that arise to the Missouri within our state, the Platte, the Alicorn, the Loup River and the Niobrara, all of which, as you well know, experienced significant flooding this past year. These studies are designed to evaluating and protecting the municipal and industrial water supplies along the main stem, important infrastructure and agriculture by studying new and improved ways of reducing future risk and preventing future losses to the extent possible. The Governor has opened up a collaborative effort with the states of Iowa, Kansas and Missouri, along with the Corps of Engineers, and has also opened up dialogue with the Upper Basin in the state, which will be critical for overall system-wide Missouri change. Governor's budget recommendation for these studies is included in our request to increase the Cash Fund appropriation by \$125,000 in FY1920 and in FY2021 into my agency Soil and Water Conservation Program. These dollars are a transfer, proposed transfer from the Water

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Sustainability Cash Fund to my department's Natural Resources Cash Fund. The second set of studies are dealing with the South Platte and the Platte River Basin. The Governor's recommendation includes again a Cash Fund appropriation increase of \$50,000 in FY1920 and \$300,000 in FY2021 again into my agency's Soil and Water Conservation Program. These studies are designed to take a look at the hydrology of the basin, looking at our surface and groundwater conjunct of management activities and to advance the modeling work that we do along with other environmental and economic impacts associated with the South Platte and Platte River Basins. These studies are going to be taking a look at the planned upstream development, water development projects in the state of Colorado and elsewhere and looking at the potential effects of those projects on Nebraska's water users. Again, the Governor's recommendation for this study was a similar fund transfer from the Water Sustainability Cash Fund to the department's Natural Resources Cash Fund, again with portions of the funds in FY1920 and another portion in 2021. It's important to note for these issues that these Cash Fund transfers that are contained in LB1009 from the Water Sustainability Cash Fund are just a portion of the investment income earned on that fund. And these "appropriational" requests do not affect any of the awarded aid funding that the water sustainability projects have been approved by the Natural Resources Commission. Lastly, I wanted to touch on the Gering-Fort Laramie Irrigation District. This is the situation that occurred with the tunnel collapse this past summer. On July 17, 2019, there was a sudden and unexpected collapse of tunnel number two of three tunnels on the Gering-Fort Laramie canal system, which caused a major breach in this very large irrigation delivery canal. This tunnel and breach were actually located upstream of this vital interstate canal system and located in the state of Wyoming. This large canal system serves over 50,000 acres in Wyoming and continues into Nebraska and serves in excess of 50,000 acres in our state as well through a single delivery system. That critical infrastructure collapse resulted in a complete shutdown of water for the entire irrigation system in both states for over 7 weeks, right through the middle of July and all of August of 2019. This tunnel was one of three tunnels along this hundred year old system and of course, without this needed water in that dry end of our state, this emergency really affected a lot of the crops grown in that area, including corn, sugar beets, dry beans and alfalfa, resulting in significant losses this past year to both our producers and the main street businesses and industries in that portion of our state that

rely on the crops being grown within those irrigation districts. The two responsible irrigation districts, Gering-Fort Laramie Irrigation District in Nebraska and the Goshen Irrigation District in Wyoming immediately began work in coordination with each other and importantly in coordination with the U.S. Bureau of Reclamation, who originally built this system over 100 years ago. And they began to temporarily repair the collapsed tunnel and the breach in the major canal, and they also inspected the remaining tunnels and other delivery aspects of this complicated system. A portion of the tunnel, number one, also located in Wyoming, the temporary repair costs that are responsibilities of our Nebraska irrigation district are estimated to be approximately a million dollars. And the major temporary repairs for tunnel number two, the initial collapse that occurred in July, up to 2.8 million dollars. The Governor's request pending before you in these bills is for a grant of up to 3.8 million to be provided for reimbursement to the Gering-Fort Laramie Irrigation District in Nebraska for their portion of these temporary repair costs, the tunnels, number one and number two. This request proposes a one-time transfer of 3.8 million dollars on or before June 30 of 2020 from the Cash Reserve Fund to the Critical Infrastructure Facilities Fund, which is administered by my department. Along with the transfer of 3.8 million, an equal amount of Cash Fund appropriation increases recommended for FY1920, in again the Critical Infrastructure Facilities Program that we manage. Finally, LB1009 has a very small but important item to repeal Nebraska statute 46-752. This is an obsolete fund that has not been used since 2011. It's a simple cleanup issue where we simply want that matter repealed. There is no balance in that fund. It has not been used almost 10 years now. And so was a cleanup issue that was actually brought forth last year but not acted upon. In closing, I'd like to thank you, the committee now for my attention for your general support as reflected in the preliminary recommendations that we've seen. And I'll be happy to answer any questions you may have.

STINNER: Questions? Senator Hilkemann.

HILKEMANN: Yeah, you said it's 3.7 million for this, where the collapse occurred.

JEFF FASSETT: 3.8.

HILKEMANN: Temporary. What's it going to take to get the whole thing-- what's it going to take to get it back to--?

JEFF FASSETT: Yeah. This is the 3.8 million is the portion of the repairs associated with just Nebraska's obligation. It's about a 50/50 cost share amongst the two irrigation districts. The districts are still working on what the ultimate conclusion of total repairs are because they are also not only trying to get every-- this is the work that's going to be necessary to get the system back in place so that they can irrigate during 2020 irrigation season. The inspections highlighted some other problems. The third tunnel, which is all of Nebraska's responsibility, has not yet been touched. And I think they're still waiting for engineering and construction cost estimates to finalize what the total rehabilitation of this old system may be.

STINNER: Might thank Senator Erdman-- can also respond, if he'd like, but the 3.8 million is temporary. That's the only thing we've committed to. When we talk about permanent fixes, you're talking about the Bureau of Reclamation owns the project. We have a lot of responsibility associated with that in terms of maintenance and, you know, keeping the project up. But I think we'll have a full court press on as far as our representation in the Senate and the House .Both in Wyoming and Nebraska, the Governor has committed to spending his energy to try to get the bureau to provide most of the funding, if not all the funding, for the permanent fix. And Senator Erdman, you may want to comment on that.

ERDMAN: Yeah, yeah, thank you, Senator Stinner. The tunnels, Senator Hilkemann, the first one is a little shorter. It's a little bigger because there's more volume there and it's about 2,000 feet, the first one. The second one is 2,600 feet, and the third one is like a mile and a third. And the third tunnel goes through-- if you've ever heard of Scotts Bluff Monument, it goes through the hill just on the south side of the highway from Scotts Bluff Monument and that's a lengthy tunnel. But it's significantly less in volume because the further you go, the less water you need. So the first one is the biggest, the second one is a little smaller, and the third one is quite a little smaller. But-- but it's quite lengthy. So their plan is, I believe, help me if I'm wrong on this, but their plan is to continue with a temporary fix this year so they can irrigate like they did at the end of the season. Is that correct?

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JEFF FASSETT: That is correct, Senator.

ERDMAN: Yeah. So if you-- if you'd like to see pictures of that, I have pictures of how they-- how they repaired it and what they're trying to do.

STINNER: Okay, the one-- oh, Senator Bolz, did you want--

BOLZ: I've got a couple of questions.

STINNER: OK. I do too, so maybe you'll ask those questions. Sorry.

BOLZ: If you want to jump in on a couple of things. For-- for my education, in addition to General Funds, what are the other existing or possible sources of funds for the irrigation district repair? Could you just list them for me? I just need to--

JEFF FASSETT: The Governor is recommending a cash reserve fund, was his recommendation.

BOLZ: Let me ask that question again. What are the potential and existing sources of funding for fixing that project? There must be things besides just this General Fund.

JEFF FASSETT: That's correct. Yeah, the district has their own borrowing authority. The Bureau of Reclamation has also provided a loan not to our irrigation district, but to the irrigation district in Wyoming. And it was actually that low interest loan which allowed the work to be accomplished. Most of this work is already done. As I testified, this will be a sort of a reimbursement of costs that have already been expended to get the system back into operational mode.

BOLZ: So that full list of potential funding sources for the repair is General Funds alone and borrowing authority? That is the complete and total list of potential funding source?

JEFF FASSETT: For-- for the Nebraska district that's correct. On the Wyoming side, they have access to other water development and other funding programs through state government of Wyoming. That is funding that Nebraska-- excuse me, funding that Wyoming Irrigation District with their portion of some of these expenses.

BOLZ: OK. My other questions are related to the basin studies. And I don't mean to nitpick, but I do think sometimes we set precedence in this committee and I just-- I want to ask some clarifying questions. You're proposing transferring dollars from the Water Sustainability Fund to Department of Natural Resources Cash Fund. My very quick review of that, it looks like the Natural Resources Cash Fund is a lot more flexible than the Water Sustainability Fund. Is that fair? Is that a fair statement?

JEFF FASSETT: In the use of the funds, that's correct.

BOLZ: OK. And so I guess I'm just wondering if you have any observations about whether-- why that's appropriate and whether or not there's any concern about future funds being transferred from the Water Sustainability Fund, which is very narrow and focused to a broader fund that could be used for numerous additional purposes.

JEFF FASSETT: Senator, the-- well, the funding that we're requesting are for these two particular studies and will not be spent on anything else but the studies that we're requesting. The Missouri studies in the South Platte, Platte River study. So those budgets have been set. And so while it's going into effect, they have authorities, don't-- don't think that our plan is to to get that money and run off and do something else with it. That those funds are for these particular studies that really are in immediate need within the current biennium and so we can really fully evaluate where we are with both the flooding and the South Platte situation.

BOLZ: Do you-- you partially answered my question--

JEFF FASSETT: OK.

BOLZ: --and I do appreciate that those-- the dollars will be used for the purposes for which you are requesting them. But I-- the other question I'm bringing up here is where I don't-- I don't recall ever transferring dollars out of the Water Sustainability Fund to another fund for another purpose. It seems, and-- and-- or maybe there is. I'm trying to figure out whether or not this is a precedent, when it's appropriate, when it's not appropriate, that's sort of the question I'm trying to ask broader than this specific.

JEFF FASSETT: OK. No, I got it now. Thank you, Senator. The money has been siphoned off of this fund over-- over time, but not for studies

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like these for my department. But the Legislature during the lean years when-- when budget cutting was more routine, there were times when this fund was clearly affected by allowing us to help manage through some of the budget shortfalls.

BOLZ: Let me-- let me try one more time. Yes, I think we have transferred funds back to the General Fund for-- for budget purposes, but I don't recall transferring funds out of the Water Sustainability Fund to be spent for another specific purpose. Yes, we have done it in terms of cost saving measures or trying to balance the budget, but not specifically transferring out of the Water Sustainability Fund to something else. It just-- is there a precedent there that I'm not recalling?

JEFF FASSETT: No, I believe this to be the first time that we've made this kind of a request.

BOLZ: OK. Thank you.

STINNER: Let me-- let me ask this question to you. And in reviewing the Water Sustainability Fund statute language, they never address what we're supposed to do with the accrued interest or the investment income that we make. Should we modi-- should we try to modify that so that there is a purpose to it? Just like to have your comment because it could be a significant amount of money that accrues into that fund.

JEFF FASSETT: That's correct, Senator Stinner, that the interest earnings stay within the fund. So this has been-- this fund has always received the benefit of those interest earnings. We, of course, are limited by the appropriations that are provided by the Legislature for the exercise and implementation of the Water Sustainability Fund. So those interest earnings obviously stay within the fund and they help-- they help create that fund. And those interest earnings are significant because the projects that have been approved-- submitted and approved by the Natural Resources Commission are often very long-term implementing projects. And so while the fund looks quite healthy, the Natural Resources Commission through my department has approved over 60 projects for over \$65 million since that fund was approved. A lot of those funds just haven't gone out the door yet. But the most of the dollars are completely allocated during every annual period of review of projects that are reviewed and approved.

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STINNER: The other question I have is, as I look at these projects, are they germane to why we set up the Water Sustainability Fund? And that's for studies.

JEFF FASSETT: They are-- not-- not specific for studies, but there was always originally the idea that the department, my department, Department of Natural Resources could access these funds. This is the first year we've made the kind of request that's before you this year. But the idea of that-- the agency seeking and applying for funds from the Water Sustainability Fund were authorized way back when the fund was first established. We generally have resisted that in the past when the program was getting started so that more of the Water Sustainability Fund dollars could-- could go and be implemented into projects on the ground across our state.

STINNER: OK. Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you for coming. Regarding Water Sustainability Fund, could you remind me what revenues come into it besides the interest earnings?

JEFF FASSETT: It is a General Fund transfer.

CLEMENTS: All right.

JEFF FASSETT: That's authorized-- but currently it's-- for this biennium it was \$11 million per year.

CLEMENTS: All right, I remember that now. There isn't anything like a fee from irrigation districts or donations from any irrigation districts that contribute to that fund?

JEFF FASSETT: There is not.

CLEMENTS: It's just state General Fund.

JEFF FASSETT: That's right.

CLEMENTS: Thank you.

JEFF FASSETT: The program though has a significant cost share responsibility, so. The applicants who are seeking this funding have

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to bring substantial funds to the table in order to-- to access the state funds.

CLEMENTS: All right. There are matching funds required to get some of this fund. Thank you.

STINNER: Senator Wishart.

WISHART: So, sort of jumping in on this conversation. So my understanding is the Water Sustainability Fund is a competitive grant program in terms of being able to access those funds.

JEFF FASSETT: That's correct.

WISHART: Have we-- so how do we articulate as a committee in the Legislature and how does your department articulate to people who have spent a lot of time applying for this that we're going to siphon off some of that money for proj-- for projects that haven't gone through that competitive grant process?

JEFF FASSETT: The-- you're right. It is a competitive grant process. We get over \$30 million a year of requests for the \$11 million. We are currently capped at the \$11 million per year appropriation authority. And that authority is what's used to allocate the grants. This interest income is above and beyond that. This doesn't affect the \$11 million that we're fully granted out this-- every year. So this isn't in the way of-- this isn't competing against that \$11 million. This is interest earnings under, above and beyond our ability to spend money for the competitive grant process.

WISHART: But we could-- we could put these monies into the Water Sustainability side and allow then for more of the projects that have applied to participate.

JEFF FASSETT: You could. Yes, that's correct.

WISHART: Okay.

STINNER: That's some of the questions that I had is that all the statute speaks to is spending the corpus amount of money, but not necessarily the investment money. Never speaks to it so they're basically utilizing some of that. The other thing it just brought to my attention by Jeanne, our fiscal analyst, that there were two

distributions out of Water Sustainability to Resource Development Fund to-- to retire some projects that lasted over a long period of time. And I had forgotten that was back when Dan Watermeier was here. So there's a little bit of a precedence to go from one fund to another. I think the big question becomes germaneness and I think this is germane, but that's-- these are my opinions. Senator Erdman, did you have a question? I'm sorry.

ERDMAN: Senator Stinner, help me, if you would. And Senator Bolz asked about where the sources of funds would come from, and one of the answers was they have a borrowing authority. But help me understand that the statute is currently written that if that irrigation district in Nebraska borrows money, they have to collect all that back in the next tax year. Is that correct?

STINNER: I'm going to have to research that to answer you. I know it falls upon the landowners to pay it back in terms of an assessment.

ERDMAN: Yeah, my understanding is--

STINNER: We're already at about 28 to \$35 an acre for paying for water now.

ERDMAN: And my understanding was it had to all be collected in the next tax year. You couldn't extend it for a period of time. Wyoming is different. And when that canal first broke, I was up there the day after and we had a conference call with the Governor of Wyoming and he committed to doing whatever he possibly could to make them whole. And so, I assured him we would try to do everything on our side as well. But-- but we need to change that statute, I believe, to allow them a longer period of time because if we had to pay for all this out of water charges, it could be as much as a hundred dollars an acre for those people in one year. That would be-- that would kill those people.

STINNER: Senator Wishart.

WISHART: In terms of the Gering-Laramie Irrigation Project that we're working on, what-- what caused that collapse?

JEFF FASSETT: The-- well, it's a hundred years old. So the the detailed investigations, to my understanding, that were accomplished by the Bureau of Reclamation and some of the contractors indicated

that literally because of its age-- this is a concrete-lined tunnel. When it was first built a hundred years ago, the technologies to do that type of work was quite different. So there was a lot of timber as-- as you were drilling through the tunnel, you had timber supports. And then they came on and they lined the tunnel and left the timbers, which were on the outside of the concrete tunnel wall. After a hundred years, people believe those timbers eventually rotted away, even though they were underground. That created a void outside of the tunnel, but under 100-foot high mountain. And the weight of the materials falling on that after all of that extended period of time, together with a couple of really wet springs, water spill traded into those systems over a long period of time and it literally just broke through the roof of the tunnel, very suddenly and unexpectedly.

WISHART: So in saying unexpectedly, I mean, who-- who is ultimately responsible for inspecting that tunnel to ensure that we wouldn't be dealing with what-- what we are dealing with now?

JEFF FASSETT: It's really a joint effort by the irrigation districts and the Bureau of Reclamation.

WISHART: OK. And how many irrigation districts do we have in the state?

JEFF FASSETT: Oh, in the state of Nebraska? I don't know off the top of my head. I'm sorry.

WISHART: OK. Are there-- do we anticipate that there are other major infrastructure types of sort of infrastructure like this in other parts of our state that need to be inspected because they're older and we could have a situation like this?

JEFF FASSETT: My-- my thought is, is that there likely are. I mean, this is-- this is one of the older systems, quite honestly, in the entire state. But there are others that of a similar age or certainly past their initial design life. I think quite honestly, to a certain extent, I know in the Panhandle and Senators-- Senator Erdman may know better than I do. It was a very significant sort of wake-up call in the Panhandle area that the system built by the federal government even this long ago to have collapsed so suddenly, even though there had been inspections. But you weren't-- it was very difficult for them to inspect behind the concrete wall to know that this situation may

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have existed. But this is a little bit of a unique situation and we certainly have lots of quaint, old, irrigation-- flood irrigation systems in the state of Nebraska.

STINNER: Senator Erdman, you want to make a comment?

ERDMAN: Yeah, I do, Senator Stinner. And I think the director is exactly right about the timbers. But what -- what happened there, and when I got there on the 19th of July, the tunnel inspector-- the tunnel restoration person was there from Missouri and we had a lengthy conversation with him. They've had 200 percent more or above average rainfall, and the water ran down the hill and got to the front of the tunnel. And instead of running into the tunnel, it ran on top of the tunnel and it ran back in about 600 feet and made a void. And those timbers had been rotten and so the water ran in there and made a void and then when the earth settled that's what broke the tunnel. And so that-- that excess water over a period of the last two, the two summers, it was 200 percent of normal and that's-- doesn't sound like much, but it was like 30-some inches. We normally get about 14 and so that water ran across the top of the tunnel until it found a place where there was a crack. The water got through that and it created a void and then the dirt settled. So that break was in about 700 feet from the end. And that's kind of what happened to it, so.

STINNER: I have pictures in my office if you want to see it.

ERDMAN: Yeah.

STINNER: It's pretty impressive. I think you do as well.

ERDMAN: Yeah, but that's what-- that's what happened. The water did-- should have ran down the hill and ran in-- into the tunnel and went through the tunnel, but it ran on top of the tunnel and went inside like that and that's-- created a void. Who would have thought it would rain 30-some inches in Wyoming.

STINNER: The other comment I will make is I've attended a couple of meetings on the irrigation districts and the need to take a look at infrastructure and the decaying infrastructure of these-- these systems have been put in, a lot of them a hundred years ago. So there is a-- there is a study about that. You may see it within your career. I think it will take them probably two to three years to put -- to put the numbers together, the engineering estimates, and assess where

we're at. So this will-- this will be something that's an ongoing question and problem. Oh, Senator Dorn, I'm sorry.

DORN: No, I wanted to wait until you finished with that discussion if everybody is done with it. But thank you, Chairman Stinner because mine refers back to the two studies that we have in here, the Missouri River and the South Platte. When-- how long are the studies? When will we get as a Legislature report or what is-- what is that process or where will we end up with in that scope of that?

JEFF FASSETT: Thank you. For the Missouri River, one of those studies is-- is about to get started, our first level of study. Then there are some other studies that are to be planned. The first one should be done in about six months, so there may be-- we should have information by this fall that can be shared. There will be public outreach as part of these studies to bring our water users and interest groups along as well. There are also future studies that we're requesting funding for that will be done and get started after this initial review. We want to sort of inform ourselves as to what the next stage is, but we're fully anticipating several studies to get through this Missouri River stuff. On the South Platte, the same way. We're actually-- if you've noticed from our requests, most of the money is in FY21, not until after July. So we're using some private dollars to do some of this work at the moment and then that-- those tasks will be picked up and carried on. So that one will likely not have much of a final report for over a year, probably.

DORN: Over a year, but either one of these, probably more likely the Missouri River Basin where we will be looking at additional fundings made on the scope of what we're looking at here.

JEFF FASSETT: We think the funding here will cover the studies that we're currently anticipating. I think we'll have to wait for the results of those to see whether there's going to be additional work or not or-- the Governor has been pretty aggressive with his fellow Governors and really wanting to jump on these issues and to effectuate some change, some policy and operational changes with the Corps. So we're not sure exactly what those future studies are going to look like and whether they'll come back or neither, exactly what may be necessary.

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DORN: But they're-- well, I guess what I'm trying to get out, will there be a possibility? You know, if we are looking at additional studies, those most likely aren't in this scope of this funding.

JEFF FASSETT: Right now, we've-- everything that's in front of you is what we know about right now.

DORN: What you know about right now and then it depends on where they end up taking you or what course it takes.

JEFF FASSETT: And how they might be cost shared. If the future study is that the main stem is okay, as an example, maybe it's just the tributaries all in Nebraska that we want to do some future work on. We're just not ready to make that decision. So we're taking this broad regional approach with the other three states to look at the major tributaries as well as the main stem to really then focus on whether additional work will be necessary or not.

DORN: And when you say there's going to be a report out there will be a report out, I guess, publicly, or are you-- be back here with the report or--

JEFF FASSETT: No, they'll probably be public distribution of most of these studies.

DORN: Okay. Thank you.

STINNER: Additional questions? I do want to say thank you for your service. Water is an important part of the western part of the state, certainly from where I'm at. But it's an important subject throughout the state and you've done a great job as director, so thank you.

JEFF FASSETT: Mr. Chairman, thank you very much. And I appreciate Jeanne's help. I'd forgotten about the RDF history, Senator Bolz. I think that actually occurred before I was here.

STINNER: Cheyenne is getting 10 inches of snow today, so. That's where he's going back.

JEFF FASSETT: We'll be happy to send it downstream, though, Senator.

STINNER: Thank you for that. Okay, thank you.

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JEFF FASSETT: Thank you.

STINNER: Any additional proponents? Seeing none, any opponents? Seeing none, anyone in the neutral capacity? Seeing none, that concludes our hearing on Agency 29.